

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

MICHAEL QUEEN,)	
)	
Appellant,)	
)	
v.)	USCA No. 15-7094
)	
ED SCHULTZ,)	
)	
Appellee.)	

**APPELLEE’S MOTION TO FILE SUPPLEMENTAL
APPENDIX AND FOR ASSOCIATED COSTS**

Pursuant to Circuit Rules 27 and 30, Appellee, Ed Schultz (“Schultz”), by and through his attorneys, hereby respectfully requests an order granting him leave to file a supplemental appendix in this appeal and imposing costs associated with filing this motion and a supplemental appendix on Appellant, Michael Queen (“Queen”). In support of this motion, Schultz states the following:

1. On May 11, 2016, five days before Queen was obligated to file the joint appendix in this appeal, counsel for Queen informed undersigned counsel via email that Schultz’s designations for the joint appendix would not be included, despite previously stating on May 3, 2016 that such designations would be included in the joint appendix if received by Friday, May 6, 2016. *See* Ex. A at 1-
2. Counsel for Queen argued that Schultz’s designations were “untimely” and “too

burdensome” because they were not provided within 14 days from December 18, 2015. *See id.* at 1.

2. In a responsive letter, dated May 12, 2016, undersigned counsel expressed surprise that Queen refused to include Schultz’s designations in the joint appendix, which were provided to Queen’s counsel on May 6, 2016. *See* Ex. B. In that letter, undersigned counsel explained why Queen’s reasons for refusing to include Schultz’s designations were meritless and contrary to the rules of this Court. *See id.*; *see also* Ex. C at 1 & 8 (conveying Schultz’s additional designations for the joint appendix to counsel for Queen).

3. Nevertheless, Queen filed a joint appendix on May 16, 2016, and subsequently a corrected joint appendix on May 25, 2016, which did not include Schultz’s designations.

4. Queen’s suggestion that Schultz’s designations were “untimely” is meritless for the following reasons:

- (a) Until May 11, 2016, Schultz had no reason to believe that the parties would not “agree on the contents of the appendix,” as contemplated by FRAP 30(b)(1), which would have obviated any need to follow the *alternative* formal timeline for making designations. *See* FRAP 30(b)(1) (“In the *absence* of agreement...” (emphasis added)).

- (b) Queen asserted in December 2015, when he first provided *some* designations for the joint appendix, that “the appellate record [was] not yet complete,” see Ex. A at 8, indicating that the 14-day period for supplying designations could not have started on that date. *See* FRAP 30(b)(1) (“...within 14 days *after* the record is filed...”)(emphasis added). Indeed, Queen filed two motions to supplement the record in this appeal, both of which were denied. The most recent of those motions was not resolved until February 10, 2016. While Queen’s last motion was pending, briefing was suspended, see Clerk’s Order (Dec. 18, 2015), and the briefing schedule was not set until the Clerk issued a subsequent order on April 4, 2016.
- (c) Schultz certainly could not have missed his opportunity to provide input on the contents of the joint appendix by not providing designations within 14-days of Queen’s initial designations in December 2015 because Queen made multiple additions and/or revisions to his designations on the following dates: April 4, May 2, and May 3, 2016. *See* Ex. A at 2-7; Ex. B. Schultz provided designations on May 6, 2016—a mere three days after Queen identified revised designations. *See* Ex. C at 1 & 8.

(d) Neither FRAP 30 nor Circuit Rule 30 permits Queen to refuse to include Schultz's designations. FRAP 30(b) states that the appellant "must" include the appellee's designations. *Id.*; *see also* FRAP 30, Advisory Comm. Notes, 1967 Adoption, Subdivision (b) ("By the new rule a single appendix is to be filed. It is to be prepared by the appellant, who must include therein those parts which he deems essential and those which the appellee designates as essential.").

Indeed, this Court and others have imposed or threatened sanctions for failing to submit a single appendix as contemplated by Rule 30. *E.g.*, *Barber v. Am. Sec. Bank*, 841 F.2d 1159, 1162 & n.3 (D.C. Cir. 1988); *Braniff Airways, Inc. v. Curtiss-Wright Corp.*, 411 F.2d 451, 455 (2d Cir. 1969); *see also, e.g., Kushner v. Winterthur Swiss Ins. Co.*, 620 F.2d 404, 407-408 (3d Cir. 1980) (dismissing appeal for failure to comply with FRAP 30).

5. Queen should pay Schultz's costs for filing this motion and for a supplemental appendix. Pursuant to FRAP 30(b)(2), "the appellant must pay the cost of the appendix" unless the appellant advises the appellee that the appellee's designations are unnecessary. Queen never advised Schultz that his designations were unnecessary and never sought to have Schultz pay for costs associated with including them in the joint appendix. Instead, Queen merely asserted that

Schultz's designations were "too burdensome" and refused to include them. Ex. A at 1. FRAP 30 does not permit an appellant to simply refuse to include an appellee's designations. Thus, Schultz should not have to bear the costs of filing a motion to supplement the appendix and filing a supplemental appendix when Queen had the responsibility to incur costs associated with filing a *single* appendix for the parties. *See Barber*, 841 F.2d at 1162 & n.3.

6. Queen's suggestion that Schultz's designations were "too burdensome" also lacks merit. Queen provided no explanation to support that assertion. Moreover, Schultz's designations were not burdensome. Schultz provided designations to Queen a mere three days after Queen made his final designations, and the designations provided by Schultz were minimal compared to Queen's designations in his appendix, which includes more than 2000 pages. Indeed, Schultz sought to reduce each party's designations by suggesting that memoranda of law be omitted from the joint appendix. *See Ex. C* at 1.

CONCLUSION

For the reasons stated, Appellee respectfully requests that the Court grant him leave to file a supplemental appendix with his brief and impose costs associated with filing this motion and a supplemental appendix on Appellant.

Dated: June 1, 2016

Respectfully submitted,

/s/

John C. Hayes Jr. (No. 183582)
Brian J. Whittaker (No. 997952)
Nixon Peabody LLP
799 9th Street, NW, Suite 500
Washington, D.C. 20001-4501
Telephone: (202) 585-8345
Facsimile: (202) 585-8080
jhayes@nixonpeabody.com
bwhittaker@nixonpeabody.com

Counsel for Appellee Ed Schultz

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June 2016, I caused a true and correct copy of the foregoing Motion to be sent via electronic filing to the following:

F. Catfish Abbott, Esq.
Steven W. Teppler, Esq.
Madison L. Kvamme, Esq.
Abbott Law Group, P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223

Frazer Walton Jr., Esq.
1913 D Street, N.E.
Washington, D.C. 20002

/s/ Brian J. Whittaker

Brian J. Whittaker

EXHIBIT A

Whittaker, Brian

From: Madison Kvamme <MK@abbottlawpa.com>
Sent: Wednesday, May 11, 2016 2:56 PM
To: Hayes, John
Cc: Steven Teppler; Whittaker, Brian; Frazier Walton; F. Catfish Abbott; Sandra Hartman
Subject: Re: Queen v. Schultz: Appendix Designations

John,

Per our phone call, we will not be including your designations in the appendix that is due on Monday, May 16, 2016. I sent you appellant's designations before the record was complete on December 18, 2015, satisfying the requirements of FRAP 30. I received no response from you or your office in the next 14 days, as afforded under FRAP 30(b)(1). Thereafter, on April 4, 2016, I revised our designations to correct a numbering error and add additional documents. Again, I did not receive appellee's designations in response during the next 14 days, in accordance with FRAP 30(b)(1). On May 3, 2016, I conferred with you in order to come to an agreement, as encouraged under the rules, added several items at your request, and sent you a designation list reflecting this agreement.

I have attempted multiple times to come to an agreement on the contents of the appendix with you, but the designations you sent on May 6, 2016, more than four months after I provided you with our original designations, are untimely and too burdensome to add at this late date when appellant's filings are substantially complete. Accordingly, we will be proceeding with filing the appendix, as previously designated. As noted in the rules, you are welcome to cite to the record for the court's reference and examination.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Date: Friday, May 6, 2016 at 9:54 AM
To: Madison Kvamme <mk@abbottlawpa.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>, Sandra Hartman <shartman@abbottlawpa.com>, "Hayes, John" <JHayes@nixonpeabody.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Madison,

Attached are our proposed additions to the joint appendix. We are hesitant to include any memoranda of law/motions briefing because the circuit's rules expressly advise against it and they can be cited from the record regardless of inclusion in the joint appendix. See Circuit Rule 30(a)(2). But, if appellant is going to include the briefing for sanctions, a

Thanks,

Brian



Brian J. Whittaker

Associate

bwhittaker@nixonpeabody.com

T 202-585-8234 | C 202-412-1972 | F 866-741-0536

Nixon Peabody LLP | 799 9th Street NW | Suite 500 | Washington, DC 20001-4501

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From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Tuesday, May 03, 2016 4:10 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott; Sandra Hartman
Subject: Re: Queen v. Schultz: Appendix Designations

John and Brian,

Per our conversation today, I have attached a revised designation. I do not believe that we should include the motion to amend the complaint because it was denied and the subject matter of the motion was covered in the transcript. We are not appealing the denial of that motion and we already have a lot of documents to include. Please let me know if you need any further information. As discussed, we expect your suggested additions by Friday.

Thanks,

Madison

--

Madison L. Kvamme*

Attorney

Abbott Law Group P.A.

2929 Plummer Cove Road

Jacksonville, FL 32223

O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 4:29 PM
To: Madison Kvamme <mk@abbottlawpa.com>
Cc: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>, Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: Re: Queen v. Schultz: Appendix Designations

Madison

Let's use a call in number in case Brian is available. 877 870 5858, 455373

John

On May 2, 2016, at 4:13 PM, Madison Kvamme <MK@abbottlawpa.com> wrote:

That will work. Thanks John.

Madison

--

Madison L. Kvamme*

Attorney

Abbott Law Group P.A.

2929 Plummer Cove Road

Jacksonville, FL 32223

O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 4:11 PM

To: Madison Kvamme <mk@abbottlawpa.com>

Cc: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>, Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: Re: Queen v. Schultz: Appendix Designations

Madison

How about 2:15 tomorrow?

John

On May 2, 2016, at 4:02 PM, Madison Kvamme <MK@abbottlawpa.com> wrote:

I will be unavailable May 4th-10th. Are you available to discuss tomorrow?

Thanks,

Madison

--

Madison L. Kvamme*

Attorney

Abbott Law Group P.A.

2929 Plummer Cove Road

Jacksonville, FL 32223

O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 3:57 PM

To: Madison Kvamme <mk@abbottlawpa.com>

Cc: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>, Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: Re: Queen v. Schultz: Appendix Designations

Madison

I think we should have a conversation to make sure there is no confusion about what you intend to include in the Appendix and what we want included.

Do you have time on Wednesday for a call?

John

On May 2, 2016, at 3:51 PM, Madison Kvamme <MK@abbottlawpa.com> wrote:

No. I mean the emails proffered during the pretrial hearing and then throughout the trial.

Madison

--

Madison L. Kvamme*
Attorney
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2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 3:49 PM

To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>

Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: RE: Queen v. Schultz: Appendix Designations

Do you mean the emails marked as exhibits during that portion of the Schultz deposition?

John

From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]

Sent: Monday, May 02, 2016 3:48 PM

To: Hayes, John; Whittaker, Brian

Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott

Subject: Re: Queen v. Schultz: Appendix Designations

John,

As an additional matter, we intend to include all of the proffered emails as exhibits.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 3:35 PM
To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Thanks. I will be back in touch with you shortly.

John

From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Monday, May 02, 2016 3:26 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

Apologies. That is meant to refer to the deposition taken on July 18, 2014. It would be easier if we were able to include that portion in the regular appendix unsealed since the pages we will be using do not reference any of the material that was intended to be sealed. However, if you are not amenable to that, we will include it as a sealed supplemental appendix in accordance with the rules.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 3:15 PM
To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Madison

When you refer to a portion of Mr. Schultz' deposition, "under seal", are you talking about the deposition taken after remand or the one taken before the first appeal?

John



John C. Hayes, Jr.

jhayes@nixonpeabody.com
T 202-585-8345 | C 202-288-3784 | F 866-947-3574
Nixon Peabody LLP | 799 9th Street NW | Suite 500 | Washington, DC 20001-4
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From: Madison Kvamme [mailto:MK@abbottlawpa.com]
Sent: Monday, May 02, 2016 2:57 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

John,

In lieu of the previous designation.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 2:55 PM
To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Madison,
Are these in addition to or in lieu of your prior designations?

John



John C. Hayes, Jr.

jhayes@nixonpeabody.com
T 202-585-8345 | C 202-288-3784 | F 866-947-3574
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From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Monday, April 04, 2016 12:30 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

Good afternoon,

We revised our appendix designations, as attached. Please let me know if you have any questions.

Thanks,

Madison Kvamme

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: Madison Kvamme <mk@abbottlawpa.com>**Date:** Friday, December 18, 2015 at 5:30 PM**To:** "Hayes, John" <JHayes@nixonpeabody.com>, "bwhittaker@nixonpeabody.com" <bwhittaker@nixonpeabody.com>**Cc:** Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>**Subject:** Queen v. Schultz: Appendix Designations

Good afternoon,

Although the appellate record is not yet complete, I have attached our designations for the appendix in the above referenced matter. Please let me know if you have any questions.

Happy holidays,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.

2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

<image001.jpg>

<image001.jpg>

<image001.jpg>

EXHIBIT B

NIXON PEABODY LLP
ATTORNEYS AT LAWNIXONPEABODY.COM
@NIXONPEABODYLLP**John C. Hayes, Jr.**
Partner

T 202-585-8345

jhayes@nixonpeabody.com

Nixon Peabody LLP
799 9th Street NW
Suite 500
Washington, DC 20001-4501
202-585-8000

May 12, 2016

VIA EMAIL mk@abbottlawpa.com
AND FIRST CLASS MAILMadison L. Kvamme, Esq.
Abbott Law Group, P.A.
2929 Plummer cove Road
Jacksonville, FL 32223Re: Appendix in *Queen v. Schultz*, No. 14-7094 (D.C. Cir.)

Dear Madison:

Thank you for the email you sent yesterday afternoon regarding your refusal to include the items we designated in the Appendix. As you know from our conversation, I am surprised by your sudden refusal to include our designations, and I do not agree that under the rules and the facts of this situation that you may disregard the items we asked to have included in the Appendix. We will file a motion with the court asking for permission to file a Supplemental Appendix with the Appellee's brief. In the motion we will seek costs from the Appellant for the Supplemental Appendix and the effort required to prepare and file the motion.

FRAP 30(b) says that the "appellant *must*, within 14 days after the record is filed serve on the appellee a designation of the parts of the record the appellant intends to include in the record" (emphasis added). That rule further provides that the appellant "must" include the appellee's designations. *See also* Fed. R. App. P. 30, Advisory Comm. Notes, 1967 Adoption, Subdivision (b) ("By the new rule a single appendix is to be filed. It is to be prepared by the appellant, who must include therein those parts which he deems essential and those which the appellee designates as essential.").

You acknowledge that you sent proposed designations in December, when "the appellate record [was] not yet complete." Since the record was not complete, the provisions of FRAP 30(b)(1) did not apply and the appellee had no obligation to send counter designations within 14 days.

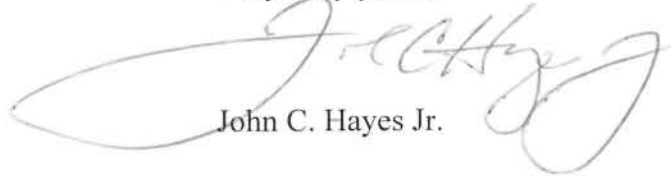
Furthermore, on April 4, 2016 you sent us an email saying, "We revised our appendix designations," and you attached those new designations. On May 2, 2016 you confirmed that the designations sent on April 4, 2016 were "[i]n lieu of the previous designation [sic]." Later that day you added "all of the proffered emails as exhibits" to the appendix. The next day, May 3,

Madison L. Kvamme, Esq.
May 12, 2016
Page 2

2016, you sent a “revised designation” based upon the conversation we had that day and closed by saying, “As discussed, we expect your suggested additions by Friday.” Our additions to the appendix were provided to you by that Friday—May 6, 2016.

Under the circumstances your refusal to include the items we designated because we did not respond within 14 days of your December designation or the April 4 designation, which was “in lieu of” the December designation, is not supported by the rules. Moreover, we certainly responded immediately to your May 2 designation, where you acknowledged the April version was “in lieu of” the prior designation and which added the “emails proffered during the pretrial hearing and then throughout the trial” to the appendix.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John C. Hayes Jr.", with a large, stylized flourish extending from the end of the signature.

John C. Hayes Jr.

cc: Steven W. Teppler, Esq. (steppler@abbottlawpa.com)
F. Catfish Abbott, Esq. (fabbott@abbottlawpa.com)

EXHIBIT C

Whittaker, Brian

From: Whittaker, Brian
Sent: Friday, May 06, 2016 9:55 AM
To: 'Madison Kvamme'
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott; Sandra Hartman; Hayes, John
Subject: RE: Queen v. Schultz: Appendix Designations
Attachments: Appellee's additional appendix designations for appeal.pdf

Madison,

Attached are our proposed additions to the joint appendix. We are hesitant to include any memoranda of law/motions briefing because the circuit's rules expressly advise against it and they can be cited from the record regardless of inclusion in the joint appendix. See Circuit Rule 30(a)(2). But, if appellant is going to include the briefing for sanctions, a new trial, and recusal because they will have independent significance, as contemplated by Rule 30(a)(2), we would like to include opposition briefing, as shown in the attached designations.

Thanks,

Brian

**Brian J. Whittaker**

Associate

bwhittaker@nixonpeabody.com

T 202-585-8234 | C 202-412-1972 | F 866-741-0536

Nixon Peabody LLP | 799 9th Street NW | Suite 500 | Washington, DC 20001-4501
nixonpeabody.com | @NixonPeabodyLLP

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From: Madison Kvamme [mailto:MK@abbottlawpa.com]
Sent: Tuesday, May 03, 2016 4:10 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott; Sandra Hartman
Subject: Re: Queen v. Schultz: Appendix Designations

John and Brian,

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Thanks,

Madison

--

Madison L. Kvamme*
Attorney

Abbott Law Group P.A.

2929 Plummer Cove Road

Jacksonville, FL 32223

O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 4:29 PM

To: Madison Kvamme <mk@abbottlawpa.com>

Cc: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>, Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: Re: Queen v. Schultz: Appendix Designations

Madison

Let's use a call in number in case Brian is available. 877 870 5858, 455373

John

On May 2, 2016, at 4:13 PM, Madison Kvamme <MK@abbottlawpa.com> wrote:

That will work. Thanks John.

Madison

--

Madison L. Kvamme*
Attorney

Abbott Law Group P.A.

2929 Plummer Cove Road

Jacksonville, FL 32223

O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 4:11 PM

To: Madison Kvamme <mk@abbottlawpa.com>

Cc: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>, Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: Re: Queen v. Schultz: Appendix Designations

Madison

How about 2:15 tomorrow?

John

On May 2, 2016, at 4:02 PM, Madison Kvamme <MK@abbottlawpa.com> wrote:

I will be unavailable May 4th-10th. Are you available to discuss tomorrow?

Thanks,

Madison

--

Madison L. Kvamme*

Attorney

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2929 Plummer Cove Road

Jacksonville, FL 32223

O: 904.292.1111

F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 3:57 PM

To: Madison Kvamme <mk@abbottlawpa.com>

Cc: "Whittaker, Brian" <bwhittaker@nixonpeabody.com>, Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: Re: Queen v. Schultz: Appendix Designations

Madison

I think we should have a conversation to make sure there is no confusion about what you intend to include in the Appendix and what we want included.

Do you have time on Wednesday for a call?

John

On May 2, 2016, at 3:51 PM, Madison Kvamme <MK@abbottlawpa.com> wrote:

No. I mean the emails proffered during the pretrial hearing and then throughout the trial.

Madison

--

Madison L. Kvamme*

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F: 904.292.1220

mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>

Date: Monday, May 2, 2016 at 3:49 PM

To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>

Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>

Subject: RE: Queen v. Schultz: Appendix Designations

Do you mean the emails marked as exhibits during that portion of the Schultz deposition?

John

From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Monday, May 02, 2016 3:48 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

John,

As an additional matter, we intend to include all of the proffered emails as exhibits.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
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F: 904.292.1220
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*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 3:35 PM
To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Thanks. I will be back in touch with you shortly.

John

From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Monday, May 02, 2016 3:26 PM
To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

Apologies. That is meant to refer to the deposition taken on July 18, 2014. It would be easier if we were able to include that portion in the regular appendix unsealed since the pages we will be using do not reference any of the material that was intended to be sealed. However, if you are not

amenable to that, we will include it as a sealed supplemental appendix in accordance with the rules.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
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*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 3:15 PM
To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Madison

When you refer to a portion of Mr. Schultz' deposition, "under seal" , are you talking about the deposition taken after remand or the one taken before the first appeal?

John



John C. Hayes, Jr.

jhayes@nixonpeabody.com
T 202-585-8345 | C 202-288-3784 | F 866-947-3574
Nixon Peabody LLP | 799 9th Street NW | Suite 500 | Washington, DC 20001-4
nixonpeabody.com | @NixonPeabodyLLP

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From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Monday, May 02, 2016 2:57 PM
To: Hayes, John; Whittaker, Brian

Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

John,

In lieu of the previous designation.

Thanks,

Madison

--

Madison L. Kvamme*
Attorney
Abbott Law Group P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
O: 904.292.1111
F: 904.292.1220
mk@abbottlawpa.com

*Phonetically: KWAH-mee

From: "Hayes, John" <JHayes@nixonpeabody.com>
Date: Monday, May 2, 2016 at 2:55 PM
To: Madison Kvamme <mk@abbottlawpa.com>, "Whittaker, Brian" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: RE: Queen v. Schultz: Appendix Designations

Madison,
Are these in addition to or in lieu of your prior designations?

John



John C. Hayes, Jr.

jhayes@nixonpeabody.com
T 202-585-8345 | C 202-288-3784 | F 866-947-3574
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From: Madison Kvamme [<mailto:MK@abbottlawpa.com>]
Sent: Monday, April 04, 2016 12:30 PM

To: Hayes, John; Whittaker, Brian
Cc: Steven Teppler; Frazier Walton; F. Catfish Abbott
Subject: Re: Queen v. Schultz: Appendix Designations

Good afternoon,

We revised our appendix designations, as attached. Please let me know if you have any questions.

Thanks,

Madison Kvamme

--

Madison L. Kvamme*
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*Phonetically: KWAH-mee

From: Madison Kvamme <mk@abbottlawpa.com>
Date: Friday, December 18, 2015 at 5:30 PM
To: "Hayes, John" <JHayes@nixonpeabody.com>, "bwhittaker@nixonpeabody.com" <bwhittaker@nixonpeabody.com>
Cc: Steven Teppler <STeppler@abbottlawpa.com>, Frazer Walton <Safeway1971@gmail.com>, "F. Catfish Abbott" <fabbott@abbottlawpa.com>
Subject: Queen v. Schultz: Appendix Designations

Good afternoon,

Although the appellate record is not yet complete, I have attached our designations for the appendix in the above referenced matter. Please let me know if you have any questions.

Happy holidays,

Madison

--

Madison L. Kvamme*
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O: 904.292.1111
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*Phonetically: KWAH-mee

<image001.jpg>

<image001.jpg>

<image001.jpg>

Appellee's Additional Appendix Designations

1. Defendant's Response to Motion for Sanctions filed by Plaintiff, Dkt. 106.
2. Memorandum in opposition to Motion for Recusal, Dkt. # 193.
3. Memorandum in opposition to Motion for New Trial, Dkt. #195.
4. Additions to transcript pages designated by Appellant.
 - a. Pretrial: 47-53, 66-71, 94-98, 98-127, 137-148, 150-157, 178-182, 185-191, 193-221.
 - b. 5/11 am: 40-41, 45-46, 51-54, 111-114.
 - c. 5/15 pm: 63-66, 93-103.
 - d. 5/18: 5.
5. Additional Transcript designations from Reporter's Official Transcript of Motion Hearing (Feb. 27, 2015): 33-47.